

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comprehensive Review of Universal Service Fund Management, Administration, and Oversight)	WC Docket No. 05-195
)	
Federal- State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	
Rural Health Care Support Mechanism)	WC Docket 02-60
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Changes to the Board of Directors for the National Exchange Carrier Association, Inc.)	CC Docket No. 97-21
)	

REPLY COMMENTS OF THE INTERNATIONAL BUSINESS MACHINES CORPORATION (IBM) ON THE NOTICE OF PROPOSED RULEMAKING (WC Docket No. 05-195)

The IBM Corporation submits these Reply Comments in response to the Notice of Proposed Rulemaking (NPRM) released June 14, 2005. The NPRM, WC Docket No. 05-124, invites interested parties to file comments regarding a comprehensive review of the Universal Service Fund, including the Schools and Libraries Support Mechanism (commonly known as the “E-rate” program).

Eligible Services

IBM agrees with the many commenters who urge greater clarity in the eligible services list, and make the following specific recommendations:

1] Standards for Determining Eligibility

IBM believes that the definition of “necessary” as currently applied to determine eligibility must be expanded to incorporate industry “best practices.” As written, “necessary” is interpreted to mean the minimum components needed to enable data transport only. However, there are a number of products and services which are commonly used throughout the industry, but which are not allowed under current program rules, such as virus protection, redundant components in eligible equipment, network management tools, etc. Precedent for this can be found with the uninterruptible power supply (UPS); a UPS does not “enable data transport,” but it maintains the functionality of eligible equipment during a power outage. Similarly, a firewall does not “enable data transport,” but it maintains the functionality of eligible equipment during certain types of “attacks.” IBM agrees with those commenters (AASA/AESA, SECA) who have suggested creating an advisory board to work with USAC to evaluate and recommend solutions for inclusion into the ESL, and compiling and codifying technical “Best Practices” documentation to serve as guidance in this area.

2] Specific Areas of Clarification

IBM believes that there are some specific areas on the ESL which require clarification. The terms “Design and Engineering” and “Project Management” are overly broad and subject to a high degree of scrutiny by USAC when they appear in a Form 471. In addition, although the ESL lists both as eligible, USAC usually requests a breakout of the sub-tasks contained by each, although no examples are provided in the ESL, and at this point the Service Provider is left to guess at which sub-tasks are and are not eligible. As above, IBM suggests referring to industry “Best Practice” documentation, determining which specific sub-tasks under each broader service category are eligible, and publishing that list in the ESL.

3] Infrastructure Standards

IBM agrees with the many commenters (California DOE, OIG, Weisiger) who have stated that “gold plating” is an issue. However, IBM believes that the answer to what constitutes a “reasonable” request for services does not lie in “ad hoc” determinations, but in the commissioning of a study, performed by an independent group, (Gartner or Meta, for example), which would establish both benchmarks for technology, i.e., how much internet bandwidth is appropriate for a school with 500 kids, and benchmarks for pricing, i.e., how much should a data cabling drop cost? This study would not only provide guidance to applicants and service providers as to pricing and technology, but would assist applicants in crafting the internal technology plans and evaluating RFPs.

IBM finds a number of issues with the concept of an “ad hoc” determination of “reasonableness”: first, it places an undue burden on the funds administrator to make determinations requiring practical industry knowledge and experience; second, it increases the likelihood of widely variant or contradictory eligibility

determinations, and; third, it denies the service provider and applicant community the fundamental right to know what the “end state” is. Similar to playing a game of football without having the sidelines and endzone marked, how can we know what “excessive” is without a clear understanding of what “reasonable” is?

4] Basic Maintenance

While there seems to be a general consensus within the greater erate community regarding what is and is not covered under “basic maintenance,” there are two items which do not appear to be covered, but we feel should be: supervisory personnel and recurring (eligible) software licenses. In the first case, once the scope of a maintenance contract reaches a certain size, it becomes very difficult to administer without dedicated, non-technical personnel handling the supervisory duties. In the second case, many districts purchase their eligible software, i.e. Exchange client licenses, paying a yearly fee. Unless these CALs fees can be reclassified as “Basic Maintenance,” the 2/5 Rule will prevent these districts from receiving discounts on these licenses every year. Simply put, if a district does not pay those license fees, “the connection would not function as intended” (without the district violating the law). We ask the FCC to review this issue.

5] Eligible Products Database

IBM agrees with the commenters who suggest that the Eligible Products Database must be accurate, must constitute a pre-certification of products, and must include services to achieve a true measure of usefulness.

Other Issues

1] Dual Reviews

IBM disagrees with USAC’s comments regarding a second review of eligibility during the invoicing process, after a service has been found to be eligible during the pre-commitment process. Clearly, it is better for both service provider and applicant for eligibility reviews to take place before funds are committed, and a post-commitment COMAD or invoicing denial can have serious financial consequences for both applicants and service providers. USAC’s comments seem to indicate that the possibility of conflicting pre and post-commitment determinations of eligibility is a reasonable outcome of the process, where IBM finds the prospect alarming. If a pre-commitment determination of eligibility can be overruled in the post-commitment process, how can a service provider trust funding commitments when one of the SLD reviewers, either pre- or post-commitment, was wrong?

In addition, IBM strongly feels that there must be a different standard applied between a pre-commitment denial and a post-commitment COMAD or invoicing rejection (which is tantamount to the same thing). Prior to the issue of an

FCDL, a service provider has committed resources, whether making sales calls, preparing bid/rfp responses, or providing neutral technical assistance, in order to compete for business. This is an accepted cost of doing business, win or lose, and the costs to compete are manageable and expected. However, after the issuance of an FCDL, a service provider begins to commit significant resources to fulfilling the contract in question, purchasing equipment, assigning technical personnel, and assembling the support infrastructure to effectively administer a large contract. In short, a pre-commitment denial is a nominal cost, a post-commitment COMAD or invoicing rejection is potentially disastrous.

To be absolutely clear, IBM certainly supports funds recovery for any sort of process malfeasance, but in the example USAC provided, it appears that both applicant and service provider followed the process, and a USAC error (either pre- or post-commitment) resulted in the invoicing denial. Stated differently, if USAC funds Router X or Service Y, both applicant and service provider followed the rules, and USAC had a complete and accurate picture of the goods or services requested, should the service provider or applicant be forced to repay funds based solely upon USAC errors?

2] Audit/Site Visit Findings

IBM believes the FCC must differentiate between an audit “finding” and an audit “suggestion.” For an issue, discovered during an audit, to rise to the level of an Audit Finding, it must be a clear violation of the rules in place at the time of the violation, not the audit. If a service provider or applicant complied with the rules at the time, it is patently unfair for those issues to be counted as Audit Findings, which are then counted into “Percentage of Violation” figures, presented in reports, falsely inflating the Waste, Fraud and Abuse data. We believe the FCC should disaggregate the legitimate Audit Findings from those not based upon rules in effect at the time of the violation, and re-release all pertinent report citing the corrected figures.

3] Discount Calculation/Block 4

IBM strongly agrees with SECA’s proposal to revise the manner in which Priority 1 discounts are calculated. As SECA correctly pointed out, the underlying assumption that any one school in a district has more resources than any other school is incorrect, and their proposal will appropriately and effectively address the issue. However, IBM also believes that there are significant advantages to expanding the scope of the proposed revision to include Priority 2 funding requests as well, including:

- Simplifying the application process. Especially in larger school districts, this would make the application process simpler, faster, and less prone to errors.

- Simplifying the review process. This would save the SLD significant time reviewing larger applications

4] USAC as Permanent Administrator

IBM agrees with the majority of commenters that believe that USAC is the best choice as permanent fund administrator. USAC has done an excellent job in general, and we submit the following areas of special comment:

- Invoicing – IBM has seen a remarkable improvement almost all measurements of invoicing performance in the last calendar year.
- Appeals – IBM has had most appeals at the SLD level over 60 days adjudicated – our backlog has been almost eliminated.
- Community Outreach – The SLD has made significant improvements in the speed and accuracy of requests for information, and has been much more personally accessible and responsible.